

STATE OF MICHIGAN  
COURT OF APPEALS

---

NILES TOWNSHIP,

Plaintiff-Counterdefendant-  
Appellee,

v

BERRIEN COUNTY BOARD OF  
COMMISSIONERS, BERRIEN COUNTY,

Defendant-Counterplaintiffs-  
Appellants.

FOR PUBLICATION  
March 23, 2004  
9:00 a.m.

No. 244138  
Berrien Circuit Court  
LC No. 2001-003851-CK

Updated Copy  
June 18, 2004

---

Before: Murray, P.J., and Murphy and Markey, JJ.

MURRAY, P.J. (*concurring*).

I fully concur in the majority's affirmance of the trial court's judgment in favor of plaintiff. However, I do not believe that either MCL 41.801(3) or MCL 41.803 is ambiguous. As a result, I fully concur with the reasoning and result within sections I, II (A), and II (C) of the majority opinion, and concur in the result found within section II (B).

Beginning first with the last mentioned statutory provision, MCL 41.803 states that "[a]ll proceedings relating to the making, levying and collection of *special assessments* . . . and the issuing of bonds . . ." must conform with certain notice provisions. (Emphasis added.) There is nothing ambiguous about this language for, as the majority notes, there is no comma separating the "special assessments" and the "bond" references. Therefore, they are conjunctive, i.e., they are to be read together as being connected to one another. *Thomas Bros, Inc v Secretary of State*, 90 Mich App 179, 184; 282 NW2d 273 (1979). Because we are to utilize common rules of grammar when reading statutory language, *Deur v Newaygo Sheriff*, 420 Mich 440, 445; 362 NW2d 698 (1984), MCL 41.803 is not ambiguous and its notice provisions apply only to special assessments done in connection with bonding.<sup>1</sup> Whether in other cases the Legislature's use of

---

<sup>1</sup> The majority also correctly concludes that to read MCL 41.803 as suggested by defendant would render the notice provisions of MCL 41.801(4) nugatory, which we are not permitted to do. *Pittsfield Charter Twp v Washtenaw Co*, 468 Mich 702, 714; 664 NW2d 193 (2003).

"and" or "or" has been interchangeable, or has caused other statutory provisions to be ambiguous, has no effect on this statutory provision, which is grammatically clear.

Likewise, MCL 41.801(3) is, in and of itself, unambiguous. Specifically, MCL 41.801(3) provides that township boards "may provide that the sums prescribed in subsection (2) for purchasing and housing equipment, for the operation of the equipment, or both, may be defrayed by special assessment." Read in isolation, as defendant would have us do, this subsection plainly provides that a special assessment can only be used to defray the specific costs of purchasing and housing equipment and for the operation of equipment, or both.

However, "the cardinal principle of statutory construction is that courts must give effect to *legislative intent*." *Morales v Auto-Owners Ins Co (After Remand)*, 469 Mich 487, 490; 672 NW2d 849 (2003) (emphasis added). In reviewing questions involving statutory construction, "[p]rovisions of a statute are not construed in isolation but, rather, in the context of other provisions of the same statute to give effect to the purpose of the whole enactment." *Chiles v Machine Shop, Inc*, 238 Mich App 462, 472; 606 NW2d 398 (1999); see also *Sweatt v Dep't of Corrections*, 468 Mich 172, 179 n 4; 661 NW2d 201 (2003) (words in a statute should not be construed in the void, but should be read together to harmonize the meaning in order to give effect to the act as a whole); *Perez v Keeler Brass Co*, 461 Mich 602, 610 n 7; 608 NW2d 45 (2000), quoting *Guitar v Bieniek*, 402 Mich 152, 158; 262 NW2d 9 (1978) ("doubtful or ambiguous provisions of a statute are construed not in isolation but with reference to and in the context of related provisions"). Further, it is axiomatic that "courts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory." *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002).

If the provisions of MCL 41.801(3) were read as defendant suggests they should be, subsection 3 would directly conflict with and render void the language of subsections 2 and 4. Specifically, MCL 41.801(2) provides, in clear and unambiguous language, that contingent funds may be appropriated for "maintenance and operation of . . . fire departments." The language in MCL 41.801(4) is likewise clear and unambiguous. In that subsection, the Legislature provided that in creating a special assessment, a township board *shall* estimate *both* the cost of "maintenance and operation of fire departments" (the general description set forth in subsection 2) *and* the cost of "fire motor vehicles," "equipment" and "housing" (the particulars listed in subsection 3). As the majority notes, subsection 4 repeatedly indicates that the special assessment is to defray the cost of the township's overall fire protection services by charging affected residents. In fact, in addition to the language in subsection 4 already noted above, subsection 4 indicates that the township board "shall annually determine the amount to be assessed in the district *for police and fire protection* . . . and shall hold a hearing on the estimated costs and expenses *of police and fire protection* . . ." MCL 41.801(4) (emphasis added). The same subsection also provides that if collections from the special assessment are "insufficient to meet the obligations or expenses incurred *for the maintenance and the operation of the police and fire departments*" the township is able to transfer or obtain a loan to make up for the difference. MCL 41.801(4) (emphasis added). Obviously, the language in subsections 2 and 4 provide much broader authorization for what costs can be defrayed by a special assessment than does subsection 3 as interpreted by defendant.

As noted, however, this Court is not permitted to read a statutory provision in such an isolated manner. *Chiles, supra; Sweatt, supra*. Rather, this Court must follow the basic principles of statutory construction and ensure that effect is given to each of the statute's provisions, which in turn gives effect to the Legislature's intent. *State Farm Fire & Cas Co, supra*. If we were to read subsection 3 in such a limiting fashion, the broader authorizations within subsections 2 and 4 would be rendered nugatory.

Instead, when the provisions of MCL 41.801 are read in context rather than in isolation, it is clear that the Legislature intended to permit a township to create a special assessment to help defray both subsection 2 costs and subsection 3 costs. Nothing within the statutory language renders subsection 3 a limitation on the types of costs that may be defrayed by special assessments. When read in conjunction with the surrounding subsections, subsection 3 serves not as a limitation, but as an illustration of specific authorizations granted to a township. In accordance with these statutory provisions, a township may, by special assessment, not only defray the cost of the maintenance and operation of fire departments (as provided in subsection 2), but also for the specific purchases stated in subsection 3. In other words, the Legislature has provided that a special assessment can be utilized for both subsection 2 and subsection 3 costs, which is plainly evident in the provisions of subsection 4.

For these reasons, MCL 41.801(3) is not ambiguous for, when read harmoniously with subsections 2 and 4, it is not subject to more than one reasonable interpretation. Therefore, I concur in the affirmance of the trial court's judgment.

/s/ Christopher M. Murray